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HOUSE BILL 580

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Keith J. Gardner

AN ACT

RELATING TO PUBLIC BENEFITS; PROHIBITING THE USE OF AN  
ELECTRONIC BENEFITS TRANSFER CARD FOR PURCHASE OF AN ALCOHOLIC  
BEVERAGE OR CIGARETTES; PROVIDING A SANCTION FOR A RETAILER WHO  
ACCEPTS SUCH A CARD FOR THE PURCHASE OF AN ALCOHOLIC BEVERAGE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-12-9.4 NMSA 1978 (being Laws 2006,  
Chapter 91, Section 10) is amended to read:

"7-12-9.4. RETAIL SALE OF CIGARETTES.--A retailer of  
cigarettes shall:

A. only obtain cigarettes for resale from a  
distributor;

B. only obtain stamped cigarettes;

C. not sell cigarettes at wholesale or for resale  
unless the retailer is also a distributor; [~~and~~]

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1           D. not accept payment for a purchase of cigarettes  
2 with an electronic benefits transfer card issued for public  
3 assistance as defined in the Public Assistance Act; and

4           ~~[D-]~~ E. comply with the provisions of the Cigarette  
5 Tax Act or any law or rule that applies to retailers of  
6 cigarettes."

7           Section 2. Section 27-1-3 NMSA 1978 (being Laws 1937,  
8 Chapter 18, Section 4, as amended) is amended to read:

9           "27-1-3. ACTIVITIES OF HUMAN SERVICES DEPARTMENT.--The  
10 department shall be charged with the administration of all the  
11 welfare activities of the state as provided in Chapter 27 NMSA  
12 1978, except as otherwise provided for by law. The department  
13 shall, except as otherwise provided by law:

14           A. administer old age assistance, aid to dependent  
15 children, assistance to persons with a visual impairment or  
16 other physical disability and general relief;

17           B. administer all aid or services to children with  
18 a disability, including the extension and improvement of  
19 services for children with such a disability, insofar as  
20 practicable under conditions in this state, provide for  
21 locating children who have a disability or a condition that may  
22 become a disability, provide corrective and any other services  
23 and care and facilities for diagnosis, hospitalization and  
24 after-care for such children and supervise the administration  
25 of those services that are not administered directly by the

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1 department;

2 C. administer and supervise all child welfare  
3 activities, service to children placed for adoption, service  
4 and care of homeless, dependent and neglected children, service  
5 and care for children in foster family homes or in institutions  
6 because of dependency or delinquency and care and service to a  
7 child who because of a physical or mental disability may need  
8 such service;

9 D. formulate detailed plans, make rules and  
10 regulations and take action that is deemed necessary or  
11 desirable to carry out the provisions of Chapter 27 NMSA 1978  
12 and that is not inconsistent with the provisions of that  
13 chapter;

14 E. take appropriate action against a recipient of  
15 public assistance for the use of an electronic benefits  
16 transfer card to purchase an alcoholic beverage or cigarettes;

17 [~~E.~~] F. cooperate with the federal government in  
18 matters of mutual concern pertaining to public welfare and  
19 public assistance, including the adoption of such methods of  
20 administration as are found by the federal government to be  
21 necessary for the efficient operation of the plan for public  
22 welfare and assistance;

23 [~~F.~~] G. assist other departments, agencies and  
24 institutions of local, state and federal governments when so  
25 requested, cooperate with such agencies when expedient in

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1 performing services in conformity with the purposes of Chapter  
2 27 NMSA 1978 and cooperate with medical, health, nursing and  
3 welfare groups, any state agency charged with the  
4 administration of laws providing for vocational rehabilitation  
5 of persons with a physical disability and organizations within  
6 the state;

7 ~~[G.]~~ H. act as the agent of the federal government  
8 in welfare matters of mutual concern in conformity with the  
9 provisions of Chapter 27 NMSA 1978 and in the administration of  
10 any federal funds granted to this state, to aid in furtherance  
11 of any such functions of the state government;

12 ~~[H.]~~ I. establish in counties or in districts,  
13 which may include two or more counties, local units of  
14 administration to serve as agents of the department;

15 ~~[I.]~~ J. at its discretion, establish local boards  
16 of public welfare for such territory as it may see fit and by  
17 rule and regulation prescribe the duties of the local board;

18 ~~[J.]~~ K. administer such other public welfare  
19 functions as may be assumed by the state after June 19, 1987;

20 ~~[K.]~~ L. carry on research and compile statistics  
21 relative to the entire public welfare program throughout the  
22 state, including all phases of dependency, defectiveness,  
23 delinquency and related problems, and develop plans in  
24 cooperation with other public and private agencies for the  
25 prevention as well as treatment of conditions giving rise to

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1 public welfare problems; and

2 ~~[L-]~~ M. inspect and require reports from all  
3 private institutions, boarding homes and agencies providing  
4 assistance, care or other direct services to persons who are  
5 elderly, who have a visual impairment, who have a physical or  
6 developmental disability or who are otherwise dependent.

7 Nothing contained in this section shall be construed to  
8 authorize the department to establish or prescribe standards or  
9 regulations for or otherwise regulate programs or services to  
10 children in group homes as defined in Section 9-8-13 NMSA  
11 1978."

12 Section 3. Section 57-2A-3 NMSA 1978 (being Laws 2000,  
13 Chapter 77, Section 3) is amended to read:

14 "57-2A-3. PROHIBITED CONDUCT.--It is unlawful for a  
15 person to:

16 A. sell or distribute in this state; acquire, hold,  
17 own, possess or transport for sale or distribution in this  
18 state; or ~~[to]~~ import, or cause to be imported, into this state  
19 for sale or distribution in this state:

20 (1) cigarettes, the package of which:

21 (a) bears a statement, label, stamp,  
22 sticker or notice indicating that the manufacturer did not  
23 intend the cigarettes to be sold, distributed or used in the  
24 United States, including labels that state: "for export only",  
25 "U.S. tax exempt", "for use outside U.S." or similar wording;

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1 or

2 (b) does not comply with: 1) all  
3 requirements imposed by or pursuant to federal law regarding  
4 warnings and other information on packages of cigarettes  
5 manufactured, packaged or imported for sale, distribution or  
6 use in the United States, including the precise warning labels  
7 specified in 15 USCA 1333; and 2) all federal trademark and  
8 copyright laws;

9 (2) cigarettes imported into the United States  
10 on or after January 1, 2000 in violation of 26 USCA 5754, any  
11 other federal law or federal implementing regulations;

12 (3) cigarettes that the person acting in  
13 regard thereto otherwise knows or has reason to know the  
14 manufacturer did not intend to be sold, distributed or used in  
15 the United States; or

16 (4) cigarettes for which there has not been  
17 submitted to the secretary of the United States department of  
18 health and human services the list or lists of the ingredients  
19 added to tobacco in the manufacture of those cigarettes as  
20 required by 15 USCA 1335a;

21 B. alter the package of any cigarettes prior to  
22 sale or distribution to the ultimate consumer by removing,  
23 concealing or obscuring:

24 (1) a statement, label, stamp, sticker or  
25 notice described in Subparagraph (a) of Paragraph (1) of

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1 Subsection A of this section; or

2 (2) a health warning that is not specified in,  
3 or does not conform with, the requirements of 15 USCA 1333;  
4 [~~or~~]

5 C. accept payment for cigarettes with an electronic  
6 benefits transfer card issued for public assistance; or

7 [~~C.~~] D. affix a stamp required [~~pursuant to~~] by the  
8 Cigarette Tax Act to a package of cigarettes described in  
9 Subsection A of this section or altered in violation of  
10 Subsection B of this section."

11 Section 4. Section 60-3A-3 NMSA 1978 (being Laws 1981,  
12 Chapter 39, Section 3, as amended) is amended to read:

13 "60-3A-3. DEFINITIONS.--As used in the Liquor Control  
14 Act:

15 A. "alcoholic beverages" means distilled or  
16 rectified spirits, potable alcohol, brandy, whiskey, rum, gin  
17 and aromatic bitters bearing the federal internal revenue strip  
18 stamps or any similar alcoholic beverage, including blended or  
19 fermented beverages, dilutions or mixtures of one or more of  
20 the foregoing containing more than one-half percent alcohol,  
21 but excluding medicinal bitters;

22 B. "beer" means an alcoholic beverage obtained by  
23 the fermentation of any infusion or decoction of barley, malt  
24 and hops or other cereals in water, and includes porter, beer,  
25 ale and stout;

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1 C. "brewer" means a person who owns or operates a  
2 business for the manufacture of beer;

3 D. "club" means:

4 (1) any nonprofit group, including an  
5 auxiliary or subsidiary group, organized and operated under the  
6 laws of this state, with a membership of not less than fifty  
7 members who pay membership dues at the rate of not less than  
8 five dollars (\$5.00) per year and who, under the constitution  
9 and bylaws of the club, have all voting rights and full  
10 membership privileges, and which group is the owner, lessee or  
11 occupant of premises used exclusively for club purposes and  
12 which group the director finds:

13 (a) is operated solely for recreation,  
14 social, patriotic, political, benevolent or athletic purposes;  
15 and

16 (b) has been granted an exemption by the  
17 United States from the payment of the federal income tax as a  
18 club under the provisions of Section 501(a) of the Internal  
19 Revenue Code of 1986, as amended, or, if the applicant has not  
20 operated as a club for a sufficient time to be eligible for the  
21 income tax exemption, it must execute and file with the  
22 director a sworn letter of intent declaring that it will, in  
23 good faith, apply for ~~such~~ an income tax exemption as soon as  
24 it is eligible; or

25 (2) an airline passenger membership club

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1 operated by an air common carrier that maintains or operates a  
2 clubroom at an international airport terminal. For the  
3 purposes of this paragraph, "air common carrier" means a person  
4 engaged in regularly scheduled air transportation between fixed  
5 termini under a certificate of public convenience and necessity  
6 issued by the civil aeronautics board;

7 E. "commission" means the secretary of public  
8 safety when the term is used in reference to the enforcement  
9 and investigatory provisions of the Liquor Control Act and  
10 means the superintendent of regulation and licensing when the  
11 term is used in reference to the licensing provisions of the  
12 Liquor Control Act;

13 F. "department" means the special investigations  
14 division of the department of public safety when the term is  
15 used in reference to the enforcement and investigatory  
16 provisions of the Liquor Control Act and means the director of  
17 the alcohol and gaming division of the regulation and licensing  
18 department when the term is used in reference to the licensing  
19 provisions of the Liquor Control Act;

20 G. "director" means the director of the special  
21 investigations division of the department of public safety  
22 when the term is used in reference to the enforcement and  
23 investigatory provisions of the Liquor Control Act and means  
24 the director of the alcohol and gaming division of the  
25 regulation and licensing department when the term is used in

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1 reference to the licensing provisions of the Liquor Control  
2 Act;

3 H. "dispenser" means a person licensed under the  
4 provisions of the Liquor Control Act selling, offering for sale  
5 or having in [~~his~~] the person's possession with the intent to  
6 sell alcoholic beverages both by the drink for consumption on  
7 the licensed premises and in unbroken packages for consumption  
8 and not for resale off the licensed premises;

9 I. "distiller" means a person engaged in  
10 manufacturing spirituous liquors;

11 J. "electronic benefits transfer card" means a card  
12 issued for public assistance benefits;

13 [~~J.~~] K. "golf course" means a tract of land and  
14 facilities used for playing golf and other recreational  
15 activities that includes tees, fairways, greens, hazards,  
16 putting greens, driving ranges, recreational facilities,  
17 patios, pro shops, cart paths and public and private roads that  
18 are located within the tract of land;

19 [~~K.~~] L. "governing body" means the board of county  
20 commissioners of a county or the city council or city  
21 commissioners of a municipality;

22 [~~L.~~] M. "hotel" means an establishment or complex  
23 having a resident of New Mexico as a proprietor or manager and  
24 where, in consideration of payment, meals and lodging are  
25 regularly furnished to the general public. The establishment

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1 or complex must maintain for the use of its guests a minimum of  
2 twenty-five sleeping rooms;

3 [M-] N. "licensed premises" means the contiguous  
4 areas or areas connected by indoor passageways of a structure  
5 and the outside dining, recreation and lounge areas of the  
6 structure that are under the direct control of the licensee and  
7 from which the licensee is authorized to sell, serve or allow  
8 the consumption of alcoholic beverages under the provisions of  
9 its license; provided that in the case of a restaurant,  
10 including a restaurant that has operated continuously in two  
11 separate structures since July 1, 1987 and that is located in a  
12 local option district that has voted to disapprove the transfer  
13 of liquor licenses into that local option district, hotel, golf  
14 course or racetrack, "licensed premises" includes all public  
15 and private rooms, facilities and areas in which alcoholic  
16 beverages are sold or served in the customary operating  
17 procedures of the restaurant, hotel, golf course or racetrack;

18 [N-] O. "local option district" means a county that  
19 has voted to approve the sale, serving or public consumption of  
20 alcoholic beverages, or [~~any~~] an incorporated municipality that  
21 falls within a county that has voted to approve the sale,  
22 serving or public consumption of alcoholic beverages, or [~~any~~]  
23 an incorporated municipality of over five thousand population  
24 that has independently voted to approve the sale, serving or  
25 public consumption of alcoholic beverages under the terms of

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1 the Liquor Control Act or any former act;

2 [Q-] P. "manufacturer" means a distiller,  
3 rectifier, brewer or winer;

4 [P-] Q. "minor" means a person under twenty-one  
5 years of age;

6 [Q-] R. "package" means an immediate container of  
7 alcoholic beverages that is filled or packed by a manufacturer  
8 or wine bottler for sale by the manufacturer or wine bottler to  
9 wholesalers;

10 [R-] S. "person" means an individual, corporation,  
11 firm, partnership, copartnership, association or other legal  
12 entity;

13 [S-] T. "rectifier" means a person who blends,  
14 mixes or distills alcohol with other liquids or substances for  
15 the purpose of making an alcoholic beverage for the purpose of  
16 sale other than to the consumer by the drink, and includes all  
17 bottlers of spirituous liquors;

18 [F-] U. "restaurant" means an establishment having  
19 a New Mexico resident as a proprietor or manager that is held  
20 out to the public as a place where meals are prepared and  
21 served primarily for on-premises consumption to the general  
22 public in consideration of payment and that has a dining room,  
23 a kitchen and the employees necessary for preparing, cooking  
24 and serving meals; provided that "restaurant" does not include  
25 establishments as defined in rules promulgated by the director

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1 serving only hamburgers, sandwiches, salads and other fast  
2 foods;

3 ~~[U.]~~ V. "retailer" means a person licensed under  
4 the provisions of the Liquor Control Act selling, offering for  
5 sale or having in ~~[his]~~ the person's possession with the intent  
6 to sell alcoholic beverages in unbroken packages for  
7 consumption and not for resale off the licensed premises;

8 ~~[V.]~~ W. "spirituous liquors" means alcoholic  
9 beverages as defined in Subsection A of this section except  
10 fermented beverages such as wine, beer and ale;

11 ~~[W.]~~ X. "wholesaler" means a person whose place of  
12 business is located in New Mexico and who sells, offers for  
13 sale or possesses for the purpose of sale any alcoholic  
14 beverages for resale by the purchaser;

15 ~~[X.]~~ Y. "wine" includes the words "fruit juices"  
16 and means alcoholic beverages obtained by the fermentation of  
17 the natural sugar contained in fruit or other agricultural  
18 products, with or without the addition of sugar or other  
19 products, that do not contain less than one-half percent nor  
20 more than twenty-one percent alcohol by volume;

21 ~~[Y.]~~ Z. "wine bottler" means a New Mexico  
22 wholesaler who is licensed to sell wine at wholesale for resale  
23 only and who buys wine in bulk and bottles it for wholesale  
24 resale;

25 ~~[Z.]~~ AA. "winegrower" means a person who owns or

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1 operates a business for the manufacture of wine; and

2 ~~[AA-]~~ BB. "winer" means a winegrower."

3 Section 5. Section 60-6C-1 NMSA 1978 (being Laws 1981,  
4 Chapter 39, Section 97, as amended) is amended to read:

5 "60-6C-1. GROUNDS FOR SUSPENSION, REVOCATION OR  
6 ADMINISTRATIVE FINE--REPORTING REQUIREMENT.--

7 A. The director may suspend or revoke the license  
8 or permit or fine the licensee in an amount not more than ten  
9 thousand dollars (\$10,000), or both, when ~~[he]~~ the director  
10 finds that ~~[any]~~ a licensee has:

11 (1) violated ~~[any]~~ a provision of the Liquor  
12 Control Act or ~~[any regulation]~~ a rule or order promulgated  
13 pursuant to that act;

14 (2) been convicted of a felony pursuant to the  
15 provisions of the Criminal Code, the Liquor Control Act or  
16 federal law; ~~[or]~~

17 (3) permitted ~~[his]~~ the licensee's licensed  
18 premises to remain a public nuisance in the neighborhood where  
19 it is located after written notice from the director that  
20 investigation by the department has revealed that the  
21 establishment is a public nuisance in the neighborhood; or

22 (4) the licensee's employee or agent has  
23 accepted payment for an alcoholic beverage with an electronic  
24 benefits transfer card.

25 B. The director shall suspend or revoke the license

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1 or permit and may fine the licensee in an amount not to exceed  
2 ten thousand dollars (\$10,000), or both, when ~~he~~ the director  
3 finds that any licensee or:

4 (1) ~~his~~ the licensee's employee or agent  
5 knowingly has sold, served or given ~~any~~ an alcoholic beverage  
6 to a minor in violation of Section 60-7B-1 NMSA 1978 or to an  
7 intoxicated person in violation of Section 60-7A-16 NMSA 1978,  
8 on two separate occasions within any twelve-month period; or

9 (2) ~~his~~ the licensee's agent has made ~~any~~  
10 a material false statement or concealed ~~any~~ material facts in  
11 ~~his~~ the licensee's application for the license or permit  
12 granted ~~him~~ the licensee pursuant to the provisions of the  
13 Liquor Control Act.

14 C. ~~Any~~ A licensee aggrieved by a revocation,  
15 suspension or fine proposed to be imposed by the director  
16 pursuant to this section shall be entitled to the hearing  
17 procedures set forth in Chapter 60, Article 6C NMSA 1978 before  
18 the revocation, suspension or fine shall be effective.

19 D. ~~Any~~ A charge filed against a licensee by the  
20 department and the resulting disposition of the charge shall be  
21 reported to the department of public safety and local law  
22 enforcement agencies whose jurisdictions include the licensed  
23 establishment."